



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

SoCAL CHAPTER

November 20, 2014

Christopher Calfee
Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Sent via Email

RE: Preliminary Discussion Draft of Updates to CEQA Guidelines
Regarding SB 743

Dear. Mr. Calfee:

NAIOP, the Commercial Real Estate Development Association, is the leading national organization of developers, owners, and related professionals in office, industrial and mixed-use real estate. NAIOP advances responsible commercial real estate development, researches trends and innovations, and advocates for effective public policy. The NAIOP SoCal Chapter serves Los Angeles and Orange Counties and is the third largest chapter in the United States with a membership of nearly 1,000 members.

The proposed addition of a vehicle miles traveled (VMT) analysis into the CEQA Guidelines is a very significant and complicated change, one that should be given extensive and detailed review. It would have been very helpful if such a discussion could have occurred in the Legislature, but it did not. Thus, we do appreciate your providing us this initial opportunity to comment, and hopefully there will be a full and robust discussion of the proposals. NAIOP does believe there are numerous issues that must be addressed before any changes to the CEQA guidelines move forward.

No Requirement to Make Changes to All Projects or Use VMT

Throughout the discussion of the proposed new guidelines it will be very important to remember the Legislature ONLY directed the Office of Planning and Research (OPR) to prepare possible revisions to the guidelines "for determining the significance of transportation impacts of projects *within transit priority areas*." (Public Resources Code Section 21009(b)(1), emphasis added) There is no requirement that the CEQA guidelines be changed in any way for areas outside of transit priority areas (TPAs). Thus, OPR's legislative requirements are fully met by SOLELY proposing changes within TPAs.

It is also important to remember the Legislature did NOT mandate the use of VMT, or even an evaluation of VMT. Although some ideas were referenced, the Legislature specifically said OPR "may" evaluate those options, and added that OPR was "not limited to," those ideas. (Public Resources Code, Section 21009(b)(1)). In fact, the legislature specifically stated the metrics that might be

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used in areas outside of TPAs “may include the retention of traffic levels of service”.

At best, using VMT is very new even within TPAs, and its full impact there is not fully known. There is no question the impact of VMT on areas outside of TPAs has not been sufficiently studied or evaluated, so how it could affect those projects is completely unknown. In light of the lack of information and since there is no mandate to use VMT, and a statement by the Legislature that LOS is a valid option, the proposed CEQA guidelines should not include projects outside of TPAs.

Practical Limitations of Implementation

OPR admits the proposed change from, Level of Service (LOS) to VMT “may not be familiar to all public agencies.”, and that “this section proposes a NEW way to evaluate transportation impacts.” (Discussion Draft, page 11, Emphasis added) The fact is VMT is not familiar to most public agencies. There are years and years of experience, analysis and case law surrounding LOS. Very little surrounds VMT. OPR even indicates they will “continue studying the application” of VMT. (ibid) Most of the work to date in evaluating VMT has been done within TPAs, and little to none has been done outside of those areas. This leaves numerous unanswered questions on how the proposed changes would impact regional transportation projects, the goods movement systems in the State, and even projects within TPAs. The main purpose of SB 743 was to “streamline” the CEQA process for TPA projects, yet even OPR indicates parking within TPAs “may still generate significant vehicle traffic.” (Discussion Draft, page 9)

It is also a fact that there is an absence of reliable, consistent and cost effective models to be used for the purposes outlined in the new guidelines, and no guidance was provided by OPR. The models that exist create numerous uncertainties as they lead to a very wide variation of results. Furthermore, the proposed guidelines call for VMT impacts to be mitigated. Yet, there are no models that can provide data to reflect the amount of mitigation that might be achieved by any given mitigation measure. The response to this reality is that the local agencies can create their own models. The fact is very few cities have traffic models, and the vast majority of cities do not have the necessary staff or fiscal resources necessary to create such complicated and costly models. Cities are struggling to just keep basic police and fire services going. Not only is it entirely unrealistic to believe cities can create these models, it is definitely not possible by January 1, 2016.

These are all serious problems that need to be resolved before any new guidelines are put into effect.

The Proposals ADD to, not Decrease, CEQA Analyses

There has been an attempt to claim the new guidelines will remove LOS as an item that needs to be evaluated, and that it will lessen the cost of projects by ending the need to provide mitigation for LOS impacts. This is simply not true. SB 743 and the guidelines specifically state the idea that automobile delay shall not be considered a significant environmental impact is limited to the situation where “automobile delay, as described SOLELY by level of service” is the issue. (Discussion Draft, pages 7-8)

SB 743 and the proposed guidelines go on to specifically admit the new guidelines “do not relieve a public agency of the requirement to analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation.” (Discussion Draft, page 7, emphasis added)) It is well known that CEQA requires an evaluation of congestion, LOS levels, to evaluate emissions levels. This is because having vehicles idling increases emissions. The longer vehicles idle at an intersection, the more air pollution is created.

It is also admitted that the VMT provisions do “NOT preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements” that exist. (Discussion Draft, page 11, emphasis added) Thus, there is no question in the real world adding VMT into CEQA only creates more analysis, more costs, more delay of projects, more CEQA litigation and on and on.

This new proposal is no relief of any kind, solely a new burden. One definite intent of SB 743 was to encourage infill development. By making the CEQA process more complicated, more costly and increasing the chances off CEQA lawsuits by those that consistently oppose infill projects, the Discussion Draft actually does the opposite. It creates disincentives to building infill projects.

SB 743 Does Not Apply to Transportation Projects

The relevant portions of SB 743 make it clear its entire purpose was to address traffic impacts from land use projects, starting right from its title; “Chapter 2.7. Modernization of Transportation Analysis For Transit-Oriented Infill Projects”. Then look at the definitions that are included; “Employment center project”, “Floor area ratio”, Gross building area”, “Infill site”, “Lot”, “Net lot area”, and “Transit priority area”. Has anyone heard of those being connected to a transportation project? Is there anything in the definitions to show any of the terms apply to transportation projects? No, just land use projects.

Turning to what OPR was directed to do. Solely to establish “criteria for determining significance of transportation impacts of projects within transit priority areas.” (Public Resources Code Section 21099(b)(1), emphasis added) Even Section 21009(c)(1) ONLY refers to “impacts”. Nowhere does Section 21099 even hint at giving OPR the option to consider transportation projects, or impacts of transportation projects, and there certainly is no reference to “Induced Vehicle Travel”.

The Discussion Draft admits there is a clear difference between a land use project and a transportation project. Page 9 of the Draft specifically states that “subsection (b)(1) addresses vehicle miles traveled associated with land use projects”, and “subdivision (b)(2) “focuses on impacts that result from certain transportation projects”. (emphasis added) With the admitted difference between the two types of projects, the legislative intent of SB 743 is also clear by the total absence of any reference to transportation projects.

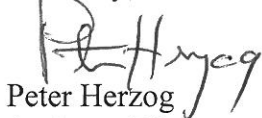
And let’s see how any of the potential mitigation measures to supposedly reduce VMT listed on page 18-19 of the Discussion Draft can in any way relate to transportation projects. There are numerous projects to add capacity to the I-5 throughout California, which are paid for by

taxpayer dollars, some of which are local voter approved tax measures with specific transportation projects identified. So, should these projects be required to build a school, grocery store, daycare center, affordable housing project, somehow relocate the freeway near to transit, increase housing density, fix the jobs/housing imbalance of an area, and on and on.

Transportation projects already go through extremely detailed CEQA reviews, reviews by numerous state and federal agencies, and more. There is nothing referenced in the Discussion Draft to indicate what this new proposal would add to what is already required to get a transportation project to construction. It already takes on average 17 years to get a major transportation project completed. We should be trying to advance transportation projects since it is well known that a sure way to cut emissions is not to have congestion. Don't make it all worse. Delete Section 15064.3(b)(2) from the Discussion Draft.

In conclusion, NAIOP SoCal understands OPR has obligations under SB 743 that you are attempting to meet. Yet, it is equally clear this is a very complex matter with far reaching consequences. A full understanding of the impacts of any proposal is necessary before any changes are put into action. Since there is so much uncertainty, it is respectfully submitted the new guidelines should solely address what is clearly mandated by the text of SB 743 and the use of VMT needs further detailed analysis.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. Herzog", written over the printed name.

Peter Herzog
Assistant Director of Legislative Affairs